S.B. CIVIL WRIT PETITION NO.4190/2005

Kailash Kumar Agarwal

Vs.

The Debts Recovery Appellate Tribunal at Mumbai and another.

Date : 18.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. PS Bhati, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order of the Debts Recovery Appellate Tribunal, Mumbai dated 27.6.2005 by which his appeal was dismissed.

According to learned counsel for the petitioner, Mumbai Debts Recovery Tribunal No.1 on application of one of the defendant (No.5), passed interim order on 26.3.2004 and restrained the other defendants including petitioner from disposing of the property in question and that order was challenged by the petitioner by filing appeal which has been dismissed by the Mumbai Debt Recovery Tribunal. According to learned counsel for the petitioner, the Tribunal allowed the application without giving any reasons and the appellate tribunal dismissed the appeal.

It appears from the order dated 26.3.2004 passed by Mumbai Debts Recovery Tribunal No.1 that by this order, the

Tribunal refused to appoint the receiver but in order to safeguard the interest of the defendant no.5 and as also of the applicant bank, the defendants have been restrained from disposing of the property.

Learned counsel for the petitioner frankly admitted that the petitioner is not intending to dispose of the property but at least the Tribunal should have considered the submissions of the petitioner and should have passed reasoned order.

According to learned counsel for the petitioner, the petitioner is not the owner of the property and it is also submitted that some co-sharers are there and hence, by this order, the interest of other co-sharers will also be affected.

It appears that the petitioner is not aggrieved party against the order dated 26.3.2004 because of the simple reason that the petitioner admits before this Court also that he is not disposing of the property as according to learned counsel for the petitioner, the petitioner is not in a position to dispose of the property. Learned counsel for the petitioner is unable to explain how a person who admits that he is not competent to sell the property and if the Court has passed the interim order restraining him from selling the property, then how could he be aggrieved.

The contention of the petitioner that the petitioner's argument should have been referred, appears to have been

raised for the purpose of raising argument and for the purpose of filing the writ petition without any reason. There may arise several instances when reasons are not need to be mentioned in the order and this is one of the case looking to the stand of the petitioner before this Court that he is not competent to sell nor he is selling the property and the Tribunal has passed the order restraining from selling the property.

In view of the above, this writ petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya